

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANGEL FLORES,	)	No. C 16-0496 JSW (PR)
	)	
Petitioner,	)	<b>ORDER TO SHOW CAUSE;</b>
	)	<b>GRANTING LEAVE TO PROCEED IN</b>
vs.	)	<b>FORMA PAUPERIS</b>
	)	
WARDEN,	)	
	)	(Dkt. No. 3)
Respondent.	)	
	)	
	)	

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**INTRODUCTION**

Petitioner, a prisoner of the State of California proceeding pro se, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the constitutionality of his state court conviction. He has applied for leave to proceed in forma pauperis.

**BACKGROUND**

Petitioner was convicted by a jury in San Francisco County Superior Court in 2000, and sentenced to a term of 24 years in state prison. The California Court of Appeal affirmed the judgment, and the California Supreme Court denied a petition for review in 2003. Over the next 11 years, Petitioner filed a number of habeas petitions and other post-judgment motions in the San Francisco County Superior Court, most of which were

1 denied. In 2010, the superior court granted his motion to correct the indictment, and in  
 2 2014, the superior court granted further discovery in connection with his motion for  
 3 modification of the judgment. A motion to the California Court of Appeal was denied in  
 4 2015. Petitioner filed a federal habeas petition in 2015 that was dismissed without  
 5 prejudice, and he filed the instant petition on January 28, 2016.

## 6 DISCUSSION

### 7 I Standard of Review

8 This court may entertain a petition for a writ of habeas corpus “in behalf of a  
 9 person in custody pursuant to the judgment of a State court only on the ground that he is  
 10 in custody in violation of the Constitution or laws or treaties of the United States.” 28  
 11 U.S.C. § 2254(a). It shall “award the writ or issue an order directing the respondent to  
 12 show cause why the writ should not be granted, unless it appears from the application that  
 13 the applicant or person detained is not entitled thereto.” *Id.* § 2243.

### 14 II. Legal Claims

15 As grounds for federal habeas relief, Petitioner claims that: (1) the prosecutor  
 16 violated his right to due process by falsifying records and misrepresenting facts; (2) law  
 17 enforcement violated the Fourth Amendment and concealed exculpatory evidence in  
 18 violation of due process; and (3) the prosecution presented differing theories of guilt to  
 19 the grand jury, at trial, and on appeal, in violation of his Fifth, Sixth and Fourteenth  
 20 Amendment rights. When liberally construed, these claims warrant a response from  
 21 Respondent.

## 22 CONCLUSION

23 For the foregoing reasons and for good cause shown,

24 1. The Clerk shall serve a copy of this order and the petition, and all attachments  
 25 thereto, on Respondent and Respondent's attorney, the Attorney General of the State of  
 26 California. The Clerk also shall serve a copy of this order on Petitioner.

27 2. Respondent shall file with the Court and serve on Petitioner, within **ninety-one**  
 28

1 (91) days of the issuance of this order, an answer conforming in all respects to Rule 5 of  
2 the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus  
3 should not be granted. Respondent shall file with the answer and serve on Petitioner a  
4 copy of all portions of the state trial record that have been transcribed previously and that  
5 are relevant to a determination of the issues presented by the petition. If Petitioner wishes  
6 to respond to the answer, he shall do so by filing a traverse with the Court and serving it  
7 on Respondent within **twenty-eight (28)** days of the date the answer is filed.


8 3. Respondent may, within **ninety-one (91) days**, file a motion to dismiss on  
9 procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to  
10 Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion,  
11 Petitioner shall file with the Court and serve on Respondent an opposition or statement of  
12 non-opposition within **twenty-eight (28)** days of the date the motion is filed, and  
13 Respondent shall file with the Court and serve on Petitioner a reply within **fourteen (14)**  
14 days of the date any opposition is filed.

15 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep  
16 the Court informed of any change of address by filing a separate paper captioned "Notice  
17 of Change of Address." He must comply with the Court's orders in a timely fashion.  
18 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
19 to Federal Rule of Civil Procedure 41(b).

20 5. Leave to proceed in forma pauperis is GRANTED.

21 IT IS SO ORDERED.

22 DATED: February 26, 2016

23   
24 JEFFREY S. WHITE  
25 United States District Judge  
26  
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